IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.4200 OF 2006

Madhavrao Balwant Patil .. Applicant

Versus

State of Maharashtra .. Respondent

Mr.Lalit Chari i/b. V.S.Katkar & Bharat Rathod

Mr.S.S.Pednekar, A.P.P. for State.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 11th December 2006

P.C.

. Heard Mr.Chari, learned Senior Counsel for applicant. He submits that while it is true that the applicant was one of the Director on the

Board of Directors and that the audit report shows irregularities committed during the course of disbursement of loans, some of them to the close relations of the Directors, yet, the applicant has not been assigned any specific role with regard to the transactions. The applicant states that one of the transaction pertained to Vijay Balwant Patil who is partner with Ideal Securites and Finance Ltd. and according to learned Additional Sessions Judge, the applicant was enlarged on Interim anticipatory bail on 13th November 2006. Ultimately, pre-arrest bail has been denied to him on the basis that as the Director on the Board of Directors, loans have been sanctioned to the Directors or their family members or near relations. Huge amounts are sanctioned without following the rules and verifying the documents. Learned Additional Sessions Judge in his order pertaining to the present applicant has observed as under:-

> "12. .... True it is that as per the report of the Administrator dated 1/11/2006 the present applicant/accused is not in arrears of any loan money of the institution. Under such circumstances, even though the present applicant/accused has deposited the loan amount due towards him still since he was the Director of the Society and he along with other Directors have indulged himself in sanctioning the unauthorised and illegal loans to the various persons particularly to the persons in whom they were interested, he cannot be escaped from the responsibility or liability of the misappropriated amount".

2. Mr.Pednekar, A.P.P. states that although there is no amount outstanding and due personally from the present applicant, but considering that some of the beneficiaries are his close relations

and that he was Director at the relevant time he should not be granted pre-arrest bail.

3. The learned Judge has failed to consider the request of pre-arrest bail on the touch stone of Section 438 of Cr.P.C. That he cannot escape criminal liability may be true but whether he is required to be detained in custody is the crucial and most relevant factor. Having perused the application and annexures thereto so also the fact that the applicant was protected by the trial court for some time and there is no apprehension that he would not extend cooperation to I.O. in investigation he deserves to be enlarged on pre-arrest bail. Hence, following order:-

i) In the event of the arrest of the applicant in connection with C.R.No.271 of 2006 registered with Panchavati Police Station, (now transferred to EOW, Crime

Branch, Nashik the applicant shall be enlarged on bail in the sum of Rs.1 lakh with one or two sureties in the like amount.

ii) The bail is granted subject to condition that the applicant to forthwith surrender his passport, if any, to the I.O. Applicant shall not leave Nashik city without prior permission of trial court. The applicant shall report to E.O.W.Crime Branch, Nashik once a week on every Monday between 11.00 a.m. and 1.00 p.m. till the charge sheet is filed and thereafter as directed by the trial court till conclusion of trial.

iii) Bail is granted subject to condition that the applicant shall not, directly or indirectly, make any inducement, threat or promise to any

person acquainted with the facts of accusation against him so as to dissuade him from disclosing such facts to the Court or to the police officer/ investigating agency. The applicant shall not tamper with the prosecution evidence.

iv) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial

v) This order will enure to the benefit of the applicant only till charge sheet is filed. Thereafter, he will be free to apply to the appropriate court for appropriate relief.

vi) Application is disposed of in

above terms.

vii) The parties to act upon an authenticated copy of this order.

(S.C.DHARMADHIKARI, J)